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# 5A

## Information

### *Credentialing and Certificated Assignments Committee of the Whole*

#### **Proposed Amendments to California Code of Regulations, Title 5 Section 80121 Pertaining to General Provisions Governing Waivers, Section 80124 Pertaining to Requirements for a Request for Subsequent Variable Term Waiver for a Specific Applicant, and Section 80125 Pertaining to Submitting Requests for Variable Term Waivers; Approvals and Denials**

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**Executive Summary:** Commission staff is presenting proposed amendments to California Code of Regulations Sections 80121 Pertaining to General Provisions Governing Waivers, Section 80124 Pertaining to Requirements for a Request for Subsequent Variable Term Waiver for a Specific Applicant, and Section 80125 Pertaining to Submitting Requests for Variable Term Waivers; Approvals and Denials for review and discussion.

**Recommended Action:** For Information Only.

**Presenter:** Rhonda Brown, Program Analyst,  
Certification, Assignment and Waivers Division

**Strategic Plan Goal: 1**

**Promote educational excellence through the preparation and certification of professional educators**

- ◆ Sustain high quality standards for the preparation of professional educators

November-December 2006

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# **Proposed Amendments to California Code of Regulations, Title 5 Section 80121 Pertaining to General Provisions Governing Waivers, Section 80124 Pertaining to Requirements for a Request for Subsequent Variable Term Waiver for a Specific Applicant, and Section 80125 Pertaining to Submitting Requests for Variable Term Waivers; Approvals and Denials**

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## **Introduction**

In an effort to keep the Commission's sections of California Code of Regulations current, Commission staff is presenting Title 5 Sections 80121 pertaining to General Provisions Governing Waivers, 80124 pertaining to Requirements for a Request for a Subsequent Variable Term Waiver for a Specific Applicant, and 80125 pertaining to Submitting Requests for Variable Term Waivers; Approvals and Denials for review and update. The regulations concerning waiver requests have not been updated since 1998.

## **Background**

When an employing agency has a shortage of credentialed personnel to meet its hiring needs, the agency may apply for a credential waiver. The Commission has had the responsibility for granting credential waivers since July 1994. When the Commission assumed this responsibility, it developed eligibility requirements that staff and stakeholders used to determine the issuance of a credential waiver. The Appeals and Waivers Committee (A&W) of the Commission reviewed and made recommendations to the Commission as a whole on credential waiver requests.

There has been a 70% reduction in the number of waivers granted by the Commission from the 2001-2002 to 2005-2006 year. Due to the significant reduction in the volume of credential waivers, the Commission determined it no longer needed to take action on waiver requests. As a result, the review and approval process of the A&W Committee and full Commission was eliminated; thus allowing staff the authority to issue credential waivers. Staff is presenting proposed regulations to align the submission timeframes for waivers to the staff's authority to grant waivers. The proposed changes will simplify the waiver process and ensure that all parties involved in the submission of a waiver request are notified of the outcome in an expedited manner. The chart on page 5A-9 illustrates the proposed changes to regulations.

## **Proposed Amendments to Regulations**

### **Section 80121**

*80121(c)(5)* When an employer has a shortage of credentialed personnel, the agency may request a Variable Term Waiver to meet its hiring needs. Staff is proposing that the term “individuals” be removed from this section because a request for a credential waiver is initiated by an employing agency on behalf of a specific individual.

### **Section 80124**

*80124(a)* The Plan to Develop Fully Qualified Educators is being removed because this option expired on January 4, 2004 per Title 5 Section 80026.4.

### **Section 80125**

*80125(a)* Staff is proposing the form Variable Term Waiver Request (form WV1 1/98) be removed to allow the Commission to develop a new form for the waiver process and allow for future revisions without having to go through the regulatory process.

*80125(b)* A credential waiver is an option of last resort for employing agencies to employ or assign individuals who are not appropriately credentialed for a particular subject area, grade level or group of students. The Commission took action to allow staff the authority to issue waivers. It is proposed that the submission guidelines be modified to a ninety (90) day timeframe to align the evaluation and approval process to staff’s authority to grant waivers. This change will expedite the waiver process and verify that those serving in an assignment on the basis of a credential waiver meet the minimum eligibility requirements within a reasonable amount of time.

*80125(b)(1)* Staff is proposing that waiver requests that are not submitted within the revised ninety (90) day submission timeframe will be denied due to lateness. Individuals that serve on the basis of a credential waiver do not have the same level of experience and/or educational background of those who hold a credential, internship credential or emergency teaching permit. Timely submission and evaluation of the request is important to verify eligibility for the waiver document and prompt notification to all interested parties of the outcome of the waiver request.

*80125(b)(2)* Staff is proposing a notification of denial for late submission of the waiver request will be mailed to all parties involved indicating the applicant must be removed from the assignment when a waiver is not submitted within the required ninety (90) day timeframe.

*80125(c)* A credential waiver is not an option if the applicant qualifies for a credential or permit that authorizes the same service. Staff is proposing that waiver requests submitted within the ninety (90) day submission timeframe that demonstrate eligibility for a credential or permit, may be returned for the appropriate document.

*80125(c)(1)* It is proposed that under staff’s responsibility to evaluate and approve waivers, requests submitted within the established timeframes that demonstrate the waiver eligibility requirements will be issued. The waiver document will indicate the applicant’s credential goal and the service appropriate to that credential.

80125(c)(2) Staff is proposing that waiver requests that do not meet the eligibility requirements will result in the receipt of a denial notification by all interested parties.

80125(c)(2)(A) Staff is proposing that denial notifications for ineligibility explain the reasons for denial and allow the employer the opportunity to resubmit the waiver packet with new information that was not originally submitted. If the employing agency does not resubmit the request the applicant must be removed from the assignment.

80125(c)(3) Staff is proposing that waiver requests resubmitted for review within thirty (30) days of the denial notification will be re-evaluated. This allows the employing agency the opportunity to provide information that was not previously available to establish eligibility for the waiver document.

80125(c)(3)(A) Staff proposes that waiver requests resubmitted within the thirty (30) day resubmission timeframe that demonstrate eligibility for a credential or permit may be returned for the appropriate document. A credential waiver is not an option if the applicant qualifies for a credential or permit that authorizes the same service.

80125(c)(3)(B) Staff proposes that timely resubmissions that meet the waiver eligibility requirements will be issued. The waiver document will indicate the applicant's credential goal and the service appropriate to that credential.

80125(c)(3)(C) Staff is proposing that timely resubmissions that do not meet the eligibility requirements will receive a final denial notification at which time the applicant must be removed from the assignment.

80125(c)(4) Staff is proposing that waiver requests that are not resubmitted within the thirty (30) day resubmission timeframe will receive a final denial notification at which time the applicant must be removed from the assignment.

### **Next Steps**

The item will return as an action item at the next Commission meeting for the purpose of beginning the rulemaking file for submission to the Office of Administrative Law and scheduling a public hearing.

## **Text of Proposed Addition to Division 8 of Title 5 of the California Code of Regulations**

### **80121. General Provisions Governing Waivers.**

(a) Definition of Terms. Terms that are used in Sections 80120 through 80124, inclusive, shall have the following meanings.

(1) The term "employing agency" means the school district; county office of education; private school; nonpublic, nonsectarian school or agency as defined in Education Code Sections 56365 and 56366; or postsecondary institution that submits a waiver application.

(2) "Applicant" means the individual for whom a waiver application is submitted.

(3) "SELPA" means a Special Education Local Planning Area.

(4) A "short-term waiver" is a temporary waiver with a term of one semester or less as described under Section 80120(a).

(5) A "variable term waiver" is a temporary waiver with a term as specified by the Commission.

(b) Waiver Service Restrictions. Except as specified by the Commission, service authorized by a waiver shall be restricted to the employing agency that submitted the waiver application and to the assignment specified on the waiver document.

(c) Authorization to Apply for Waivers. Each application for a variable term waiver shall be submitted to the Commission on behalf of the individual identified in the application. The following may submit applications for variable term waivers:

(1) public school districts in California;

(2) county offices of education or county superintendents of schools in California;

(3) postsecondary institutions; and

(4) private schools in California (in particular, nonpublic, nonsectarian schools and agencies as defined in Education Code Sections 56365 and 56366); ~~and~~

~~(5) individuals.~~

Note: Authority cited: Section 44225(q), Education Code. Reference: Section 44225, subdivisions (g) and (m), Education Code.

#### **80124. Requirements for a Request for a Subsequent Variable Term Waiver for a Specific Applicant.**

(a) A request for a subsequent variable term waiver for a specific applicant in the same assignment shall meet the requirements of Section 80122 and must include verification that the applicant has fulfilled his or her commitment to pursue the completion of requirements leading toward the credential which authorizes the service ~~or has completed the alternative requirements specified in the employing agency's approved Plan to Develop Fully Qualified Educators.~~

Note: Authority cited: Section 44225(q), Education Code. Reference: Section 44225, subdivisions (g) and (m), Education Code.

## 80125. Submitting Requests for Variable Term Waivers; Approvals and Denials

(a) Requests for variable term waivers must be submitted on ~~the form Variable Term Waiver Request (form WV1-1/98) which is incorporated by reference and provided by the Commission~~ a form developed and provided by the Commission and must include written documentation supporting the waiver, including, but not limited to: ~~such items as~~ dated copies of announcements of the vacancy, a job description detailing the specific employment criteria for the position, official transcripts, the original foreign transcript evaluation letter, examination score reports, and verifications of experience.

(b) A waiver request should be submitted to the Commission prior to the applicant's beginning day of service. ~~In those cases where an employing agency has an unanticipated need, the~~ The Commission will honor the beginning date of service listed on the waiver request as long as the ~~waiver requests for individuals who require a Commission fitness review be~~ is ~~submitted in time to be reviewed by the Appeals and Waivers Committee at their first meeting following~~ within ninety (90) days of the beginning date of service listed on the waiver request. ~~Failure to meet the first meeting deadline will result in a staff recommendation that the Commission deny the waiver request.~~

~~(c) In those cases where an employing agency has an unanticipated need and the waiver request is for an individual who has fingerprint clearance on file at the Commission, the Commission will honor the beginning date of service listed on the waiver request as long as the request is received in the Commission office for review by the Appeals and Waivers Committee by the waiver submission deadline for the third Commission meeting following the beginning date of service.~~

~~(1) If extenuating circumstances exist that are beyond the control of the employing agency and/or the applicant, the waiver request must be received in the Commission office by the waiver submission deadline for the fourth Commission meeting following the applicant's beginning date of service. A full explanation of the extenuating circumstances must accompany the waiver request.~~

~~(2) Waiver requests that are received in the Commission office after the waiver submission deadline for the third Commission meeting~~ ninety (90) day deadline following the beginning date of service ~~and that have no explanation of extenuating circumstances are included in the next Committee agenda with a staff recommendation for denial because of lateness. Representatives of the employing agency may appeal the staff recommendation to the Committee, but may not present information that was not available to the staff at the time of their review of the waiver request. If the Committee votes to recommend denial of the waiver request because it is late, the recommendation is presented to the full Commission in general session for action at the same Commission meeting~~ will be denied due to lateness.

~~(3)(2) Waiver requests that are received in the Commission office after the waiver submission deadline for the fourth Commission meeting following the beginning date of service are administratively denied by Commission staff. The Commission shall promptly mail a notice of denial to the employing agency, the applicant, and the county office of education when applicable. Upon receipt of the denial notice, the employing agency must remove the applicant from the assignment at the end of the working day.~~

~~(d)(c)~~ Waiver requests received within the ninety (90) day deadline following the beginning date of service are reviewed by Commission staff and may be returned for additional information or clarification before the request is scheduled for the Appeals and Waivers Committee agenda. Such returned requests should be resubmitted with the needed information to the Commission office as soon as possible, but must be received in the Commission office by the waiver submission deadline for the fourth Commission meeting following the beginning date of service. If the applicant qualifies for a credential or permit that authorizes the service, the waiver request may be returned for an application and fee, as appropriate, for the appropriate credential or permit authorizing the service.

~~(1)~~ Waiver requests that are received in the Commission office too late to be returned to the employing agency for additional information and resubmitted in time to be reviewed by the fourth Commission meeting are included in the next Committee agenda with a staff recommendation for denial because of the missing information. New information from the employing agency may be presented to the Committee at the meeting. The request proceeds as described in subsection (d) below When the applicant meets the requirements as specified in Section 80122, and following the conclusion of a fitness review performed by the Division of Professional Practices, a numbered waiver document will be issued. The waiver document identifies the applicant's credential goal and authorizes the service appropriate to that goal.

~~(2)~~ Waiver requests that are resubmitted with additional information after the waiver submission deadline for the fourth Commission meeting following the beginning date of service are included in the next Committee agenda with a staff recommendation for denial because of lateness. Representatives of the employing agency may appeal the staff recommendation to the Committee and must include the additional information requested by staff at the time of their review of the waiver request. If the Committee votes to recommend denial of the waiver request because it is late, the recommendation is presented to the full Commission in general session for action at the same Commission meeting When the applicant does not meet the requirements as specified in Section 80122 or insufficient information is provided by the employing agency the waiver will be denied. The Commission shall promptly mail a notice of denial to the employing agency, the applicant, and the county office of education when applicable.

~~(A)~~ The denial notice will explain the reasons for the denial and afford the employing agency an opportunity to submit additional information in support of the waiver request that was not available at the time the request was originally submitted. If the waiver request is not resubmitted per (c)(3) of this section, upon receipt of the denial notice, the employing agency must remove the applicant from the assignment at the end of the working day.

~~(3)~~ Waiver requests that were denied for insufficient information or ineligibility that are resubmitted with additional information after the waiver submission deadline for the fifth Commission meeting following the beginning date of service are administratively denied by Commission staff within thirty (30) days of the date on the denial notice are reviewed by Commission staff.

~~(A)~~ When the applicant qualifies for a credential or permit that authorizes the service, the waiver request may be returned for an application and fee, as appropriate, for the credential or permit authorizing service.

(B) When the applicant meets the requirements as specified in 80122, and following the conclusion of a fitness review performed by the Division of Professional Practices, a numbered waiver document will be issued. The waiver document identifies the applicant's credential goal and authorizes the service appropriate to that goal. The Commission shall promptly mail a notice of denial to the employing agency, the applicant, and the county office of education when applicable. Upon receipt of the denial notice, the employing agency must remove the applicant from the assignment at the end of the working day.

(C) When the applicant does not meet the requirements as specified in Section 80122 or insufficient information is provided by the employing agency the waiver will be denied. The Commission shall promptly mail a final notice of denial to the employing agency, the applicant, and the county office of education when applicable. Upon receipt of the final denial notice, the employing agency must remove the applicant from the assignment at the end of the working day.

(4) Waiver requests that were denied for insufficient information or ineligibility that are resubmitted after thirty days of the denial will be denied. The Commission shall promptly mail a final notice of denial to the employing agency, the applicant, and the county office of education when applicable. Upon receipt of the final denial notice, the employing agency must remove the applicant from the assignment at the end of the working day.

~~(e) The Appeals and Waivers Committee may vote to recommend either approval or denial of a waiver request, or may postpone the decision until the next meeting if additional information is needed.~~

~~(1) If the Committee votes to recommend approval of a waiver request, the recommendation is presented to the full Commission in general session during that meeting for final vote. The full Commission may either vote to confirm approval which becomes effective immediately or vote to return the request to the Committee for further consideration.~~

~~(A) After the waiver is approved, and following the conclusion of any fitness review that may be performed by the Division of Professional Practices, a numbered waiver document is issued. The waiver document identifies the applicant's credential goal and authorizes the service appropriate to that goal.~~

~~(2) If the Committee votes to recommend denial of a waiver request, except for the reason of failure to meet the specified timelines as described in subsections (c)(2) and (d)(2) above, the following procedure is initiated:~~

~~(A) The employing agency is sent a letter explaining the reasons for the Committee's recommendation to deny and affording the employing agency an opportunity to submit additional written information in support of the waiver request that was not available at the time the request was originally submitted. Resubmission must be received in the Commission office by the printed agenda cut-off date for the next Commission meeting (approximately two weeks following the mailing of the letter) or no reconsideration will be presented to the Committee.~~

~~(B) If no timely reconsideration request is received, the recommendation for denial is presented to the full Commission in general session for action at the next scheduled Commission meeting. The full Commission may vote to confirm denial, to amend the Committee's decision, or to return the request to Committee for further consideration. The Commission shall mail a notice of denial the Monday following the Commission meeting to~~



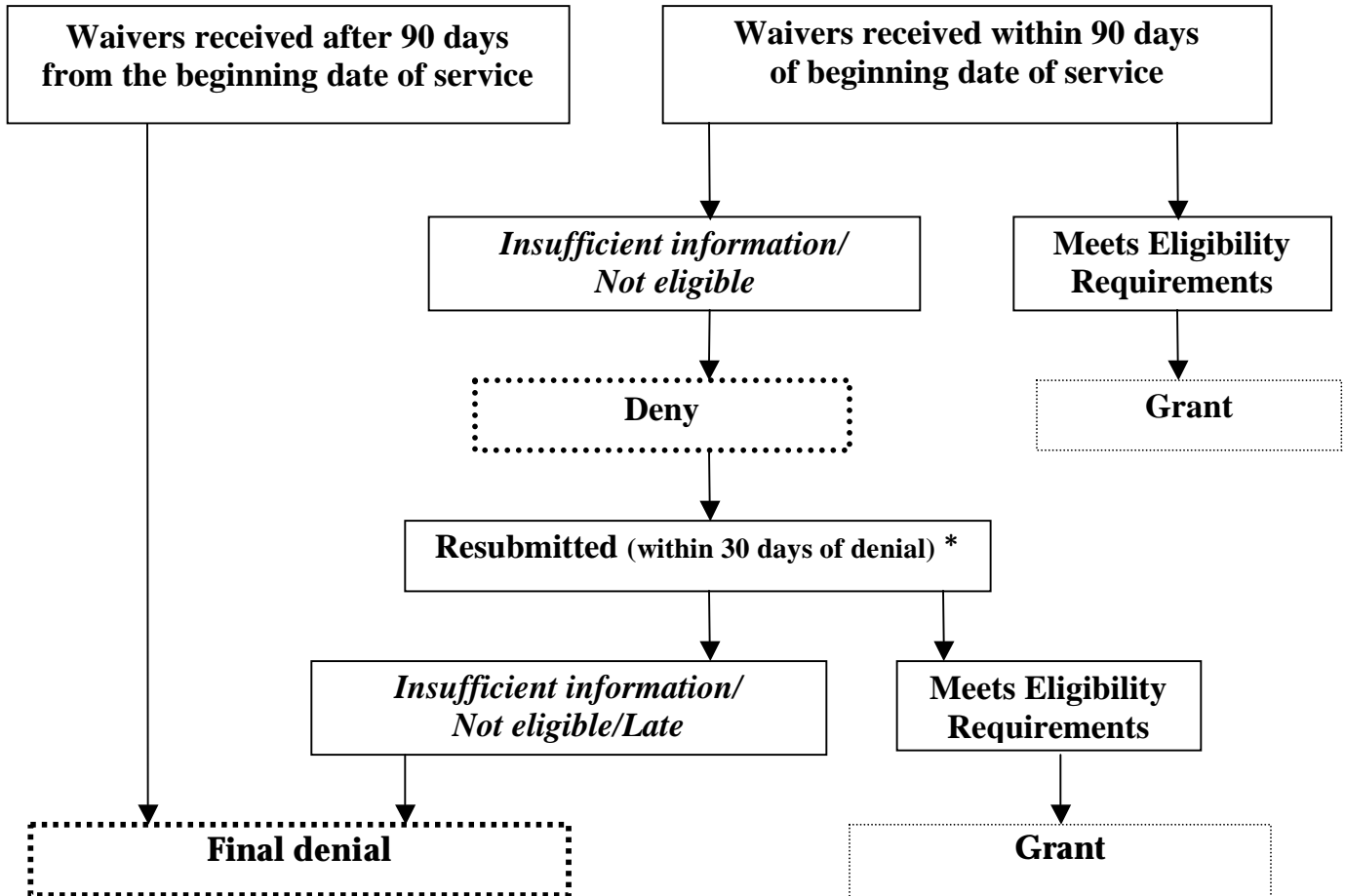
~~the employing agency, the applicant, and the county office of education when applicable. Upon receipt of the denial notice, the employing agency must remove the applicant from the assignment at the end of the working day.~~

~~(C) If timely reconsideration is requested, the request appears again in the Appeals and Waivers Committee agenda. The Committee may vote to recommend approval or may vote to sustain its recommendation of denial. The Committee's recommendation is presented to the full Commission in general session during that meeting for final vote.~~

~~(D) The full Commission may vote to confirm or amend the Committee's decision. If the waiver request is approved, and following the conclusion of any fitness review that may be performed by the Division of Professional Practices, a numbered waiver document is issued. The waiver document identifies the applicant's credential goal and authorizes the service appropriate to that goal. If the full Commission votes to deny the waiver request, it shall mail a notice of denial the Monday following the Commission meeting to the employing agency, the applicant, and the county office of education when applicable. Upon receipt of the denial notice, the employing agency must remove the applicant from the assignment at the end of the working day.~~

Note: Authority cited: Section 44225(q), Education Code. Reference: Section 44225, subdivisions (g) and (m), Education Code.

## Proposed Waiver Process



\* Must be information not previously submitted and/or not previously available